

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 732 of 2000****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MR.JUSTICE H.B.ANTANI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?5 Whether it is to be circulated to the civil judge
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SHAMBHUJI JUHAJI THAKOR & 5 - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

MR BP MUNSHI for Appellant(s) : 1 - 6.

MS HANSABEN PUNANI Ld. APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**and****HONOURABLE MR.JUSTICE H.B.ANTANI****Date : 02/07/2007****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)**

1. The appellants have preferred the present appeal under sec. 374 of CrPC against the order of conviction passed by the learned Addl. Sessions Judge, Gandhinagar in Sessions Case No. 13/2000 dated 20.7.2000, whereby, the learned Addl. Sessions Judge convicted the appellants for the offences punishable under sec. 307 read with section 147, 148 and 149 of IPC for 10 years R/I.

2. The short facts giving rise to the present appeal are as under:

3. The complainant Shantaben daughter of Ramaji Dhiraji married appellant no. 1 - ori. Accused no. 1, four years prior to the date of the incident. The complainant used to stay in the house of her in-laws at village Firojpur, Tal. Daskroi, Dist. Ahmedabad. As per the prosecution case, the appellant no. 1 demanded Rs. 10,000/- for purchasing Tractor and subsequently demanded Rs. 50,000/-, but as the arrangement could not be made to pay the amount, she was ill-treated by her in-laws. The other appellants also ill-treated the complainant. The appellant no. 1 poured kerosene on the complainant and set her on fire. The persons from the neighbourhood came to the rescue of the complainant and doused the fire. The complainant was subsequently taken to the Civil Hospital, Ahmedabad for the purpose of giving immediate treatment. The Investigating Officer who conducted the investigation recorded the statements

of the witnesses, prepared panchnama of the place of incident and obtained the medical reports and subsequently filed charge-sheet against the appellants. The appellants came to be arrested and produced before the court. The charge against the appellants was framed vide Exh. 4 for the offences punishable under sec. 307, 147, 148, 149 and 498-A of IPC as well as under sec. 3 and 4 of Dowry Prohibition Act. The appellants pleaded not guilty to the charge levelled against them, the matter was thereafter set down for full-fledged trial before the learned Additional Sessions Judge, Gandhinagar.

4. The prosecution examined following witnesses in order to prove the guilt of the appellants:

1. Dr. Govindbhai D. Patel PW-1 Ex. 12
2. Kalaji Bhulaji, panch, PW-2 Exh. 15
3. Atmaram Ramtuji Jadav Panch PW-3 Exh. 17
4. Shantaben Shambhuji, complainant, Ex. 19
5. Ramaji Dhiraji (father of complainant) PW-5 Ex.21
6. Laxmiben Ramaji, panch, PW-6 Exh. 23
7. PSI Mandanbhai Arjanbhai, I.O., PW-7 Exh. 25
8. H.C. Pravinsinh Laxmansinh PW-8 Exh. 26

5. The prosecution has also produced documentary evidence as under:

1. Panchanama of the place of incident vide Exh. 16.

2. The complaint given by Shantaben vide Exh. 20
3. The panchnama of the person of the complainant vide Ex. 22.
4. The certificate issued in favour of complainant - Shantaben vide ex. 13 etc.

6. After the conclusion of the trial, further statement of all the appellants were recorded under sec. 313 of CrPC.

7. On appreciation of the oral deposition and the documentary evidence relied upon by the prosecution, the learned Addl. Sessions Judge, Gandhinagar acquitted the appellants for the offences punishable under sec. 3 and 4 of the Dowry Prohibition Act as well as under sec. 498-A of IPC. However, the appellants were convicted for the offences punishable under sec. 307 read with sec. 147, 148 and 149 of IPC for 10 years R/I. The aforesaid order of conviction has been challenged by the appellants in the present appeal.

8. Learned advocate appearing on behalf of the appellants submitted that the complainant Shantaben and the panch witnesses have turned hostile and not supported the prosecution case with regard to the demand of dowry and the torture inflicted on Shantaben and as the prosecution has miserably failed to prove the involvement of the appellants in the commission of the offence, the appellants are required to be acquitted. Learned advocate further

submitted that on complete perusal of the oral deposition and the documentary evidence, there are many contradictions in the version given by the witnesses and the documentary evidence. When there are contradictions in the deposition adduced by the prosecution witnesses and the documentary evidence, it would raise doubt about the involvement of the appellants in the commission of the offence and, therefore, the benefit of doubt be given to all the appellants. Learned advocate further submitted that while convicting the appellants under sec. 307, 147, 148 and 149 of IPC, the learned Addl. Sessions Judge heavily placed reliance on the dying declaration given by Shantaben. However, Shantaben ultimately survived and gave deposition before the court, wherein, she has not indicated the involvement of the appellants in the commission of the offence. In view of the aforesaid facts and circumstances, the dying declaration given by Shantaben cannot be relied upon in order to convict the appellants for the offence punishable under sec. 307, 147, 148 and 149 of IPC. Thus, the learned advocate submitted that on the basis of the oral deposition and the documentary evidence the prosecution could not establish the case against the appellants and, therefore, all the appellants are liable to be acquitted.

9. As against the aforesaid submissions, learned APP representing the State vehemently submitted that dying declaration given by Shantaben makes it abundantly clear that the appellant no. 1 poured

kerosene on her and set her ablaze. The other appellants also helped appellant no. 1 in the commission of the said offence. The appellants used to demand dowry and inflict mental and physical torture on Shantaben and that fact cannot be overlooked by the court. Learned APP submitted that taking into account the entire oral deposition and the documentary evidence, more particularly, the dying declaration of Shantaben and the medical certificate given by the General hospital, Gandhinagar, the appellants were rightly convicted by the learned Addl. Sessions Judge, Gandhinagar for the offence punishable under sec. 147, 148, 149 and 307 of IPC for a period of 10 years' R/I and the sentence imposed on the appellants is required to be upheld and the appeal preferred by the appellants be dismissed.

10. Heard the learned advocate Mr. BP Munshi for the appellants and Ms. Hansaben Punani learned APP for the respondent-State and perused the oral as well as documentary evidence produced on the record of this appeal.

11. We have taken into consideration the oral evidence which has been adduced by the prosecution as well as documentary evidence on which reliance has been placed by the prosecution to prove the involvement of the appellants in the commission of the offence. Complainant Shantaben the wife of appellant no. 1 was inflicted mental and physical

torture by her in-laws and her in-laws demanded Rs. 10,000/- as well as Rs. 50,000/- for the purpose of buying the tractor. When she refused to bring the amount of Rs. 50,000/- from her parents, she was inflicted mental and physical torture by the appellants. The appellant no. 1 poured kerosene on her and set her ablaze. The complaint was given by Shantaben vide Ex. 20. The dying declaration of Shantaben was also recorded by the Executive Magistrate Mr CM Patel. On perusal of dying declaration given by Shantaben, she had indicated the involvement of the appellants in the commission of the offence. However, if we perused the deposition given by her vide Ex. 19, then, she had denied the mental and physical torture inflicted by her in-laws as well as the demand of dowry. As per her deposition, she was not set on fire by appellant no. 1. Thus, the complainant has completely turned hostile and not supported the prosecution case. The other witnesses Kalaji Bhulaji PW-2 Ex. 15, Atmaram Ramtaji Jadav PW-3 Ex. 17, Laxmiben Ramaji PW-6 Ex. 23 have also not supported the prosecution version about the involvement of the appellants in the commission of the offence. Even on perusal of the documentary evidence along with the oral deposition adduced by the prosecution, there are many contradictions. In view of the aforesaid facts and circumstances, we are of the considered view that when there are contradictions in the deposition as well as in the documentary evidence, the benefit of the same is required to be given to the appellants.

As there are many chinks in the armour of the prosecution case, we considered it fit to acquit all the appellants for the offences punishable under sec. 307 read with sec. 147, 148 and 149 of IPC. Hence, we pass the following order:

12. In the result, this appeal is allowed. The judgment and order passed by the learned Additional Sessions Judge, Gandhinagar on 20th July, 2000 in Sessions Case No. 13 of 2000, convicting the appellants for the offences punishable under sec. 307 read with sections 147, 148 and 149 IPC for a period of 10 years R/I, is quashed and set aside. Bail bonds of the appellants stand cancelled.

(A.R. DAVE, J.)

(H.B. ANTANI, J.)

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